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1998

March 2, 1998

PATRICIA Y. LEE
202-457-7110

VIA HAND DELIVERY
Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Telecommunications Services Inside Wiring, Customer Premises Equipment
CS Docket No. 95-184

In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring
MM Docket No. 92-260

Dear Ms. Salas:

Transmitted herewith, on behalf of United States Satellite Broadcasting Company, Inc. ("USSB"), are an original and four copies of its reply comments to the comments filed in response to the *Report & Order* and *Second Further Notice of Proposed Rule Making* in the above-referenced proceeding released by the Commission on October 17, 1997.

If you have any questions, please contact the undersigned.

Very truly yours,

HOLLAND & KNIGHT LLP

Patricia Y. Lee
Counsel for United States Satellite Broadcasting Company, Inc.

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Services	)	CS Docket No. 95-184
Inside Wiring	)	
	)	
Customer Premises Equipment	)	
	)	
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In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	MM Docket No. 92-260
and Competition Act of 1992:	)	
	)	
Cable Home Wiring	)	

REPLY COMMENTS OF
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.

UNITED STATES SATELLITE
BROADCASTING COMPANY, INC.

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Its Counsel

March 2, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Services Inside Wiring	))	CS Docket No. 95-184
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	)	
Cable Home Wiring	)	

**REPLY COMMENTS OF
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.**

I. INTRODUCTION.

1. United States Satellite Broadcasting Company, Inc. ("USSB"), by its counsel, hereby submits its reply comments to the comments filed in response to the *Report & Order and Second Further Notice of Proposed Rule Making* released by the Commission in the above-captioned proceeding on October 17, 1997 ("*R&O*" or "*Second Further Notice*").[1]

[1] On January 16, 1998, the Commission released an *Order* extending the time for filing reply comments in the above-captioned proceeding until March 2, 1998. *Order Extending Time Period for Filing Reply Comments and Establishing a Filing Date for Filing Surreply Comments*, CS Docket No. 95-184, MM Docket No. 92-260 (Telecommunications Services Inside Wiring, Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring) DA 98-87.

2. USSB is a DBS licensee providing multichannel video programming by satellite directly to subscribers' homes and businesses via DSS™ receiving equipment, which includes an 18-inch antenna. USSB believes that all consumers, including those living in multiple dwelling units ("MDUs"), should have an opportunity to choose freely among competing multichannel video programming distributors ("MVPDs") for their preferred video service.

3. Today, because of their market power, cable operators effectively enforce the exclusivity provisions in their contracts with MDU owners and continue to obtain long-term and even perpetual exclusive contracts from MDU owners which prevent alternative MVPDs from providing service to the affected MDUs. These exclusive contracts thereby foreclose any MVPD competition in MDUs, in violation of the Telecommunication Act's mandate to promote competition in the MVPD marketplace. In order to eliminate this barrier to MVPD entry into MDUs, the Commission should adopt rules prohibiting exclusive contracts between cable operators and MDU owners.

4. In addition, the Commission should adopt regulations to require the sharing of inside wiring. Currently, the cable-owned inside wiring in most MDUs is a significant obstacle to competition because many incumbent cable operators refuse to share the wiring with alternative MVPDs. Owners of MDUs typically are not willing to allow alternative MVPDs to overbuild the existing inside wiring because of the disruption and inconvenience that such duplicative wiring would entail. Therefore, unless alternative MVPDs have guaranteed access to existing inside wiring, they cannot feasibly provide video services to MDUs.

5. The Commission has ample authority pursuant to Section 207 of the Telecommunications Act of 1996 and pursuant to its general powers to adopt the rules proposed

here. In this regard, USSB supports the comments filed by DIRECTV in these proceedings which urge the Commission to take the same action requested here.

II. TO PROMOTE MVPD COMPETITION AND CONSUMER CHOICE, THE COMMISSION SHOULD PROHIBIT CABLE EXCLUSIVE CONTRACTS.

6. In the case of cable inside wiring, exclusive contracts between cable operators and MDU owners are inherently anticompetitive because they prohibit the MDU owner from permitting alternative MVPDs to provide video services to any MDU resident for the term of the contract. Because in the past cable was the only source of MVPD programming, these contracts often contain lengthy terms, typically ten to fifteen years, and some are perpetual. As a result, MDU owners are often "locked in" to cable contracts for the foreseeable future whether or not they or their residents are satisfied with the cable services provided. Today, cable is only one of several alternative MVPDs. Yet these contracts continue in force. USSB agrees with DIRECTV that these exclusive contracts enable cable operators to maintain their market power with regard to MDUs and to impede competition by alternative MVPDs. DIRECTV Comments at 5. Accordingly, the Commission should prohibit exclusive contracts between cable operators and MDU owners.

7. Once an MDU owner has entered into a cable exclusive contract, it is often difficult, if not impossible, for him or her to switch to or add another video service provider. As the Commission has recognized and DIRECTV notes in its comments, where the MDU owner seeks another video service provider for whatever reason, the incumbent cable operator often invokes the exclusivity provision in its contract to prevent the MDU owner from switching service providers. *R&O* at ¶ 38; DIRECTV Comments at 6. In this way, cable exclusive contracts foreclose competition and consumer choice among competing MVPDs.

8. To eliminate this barrier to entry and consumer choice, the Commission should adopt rules that prohibit cable operators from entering into exclusive contracts with MDU owners and from enforcing the exclusivity provisions in existing contracts with MDU owners. A ban on exclusive contracts will enable alternative MVPDs to compete with cable for the provision of video services to MDUs and will give consumers the ability to select their preferred video service provider. Consequently, a ban on exclusive contracts by cable operators with MDU owners is consistent with the statutory mandate and the Commission's policy of promoting MVPD competition.[2]

9. Finally, we agree with DIRECTV that the Commission has authority under Section 207 of the Telecommunications Act of 1996[3] to adopt rules prohibiting cable operators from entering into, or enforcing, exclusive contracts with MDU owners. DIRECTV Comments at 7. Section 207 requires the Commission to "promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of . . . direct broadcast satellite service."[4] Thus, Section 207 not only authorizes, but directs, the Commission to take the action proposed here.

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[2] *See, e.g.*, Sections 601(6), 628 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521(6), 548; Telecommunications Services Inside Wiring, Customer Premises Equipment, *Further Notice of Proposed Rule Making*, CS Docket No. 95-184, FCC 97-304, at ¶ 2 (rel. Aug. 28, 1997) ("*Further Notice*").

[3] Telecommunications Act of 1996, Pub.L.No. 104-104, § 207, 110 Stat. 114, *codified* at 47 U.S.C. § 303 note.

[4] 47 U.S.C. § 303 note.

10. Also, Sections 1, 4(i), 303(r) of the Communications Act give the Commission general powers to adopt rules prohibiting cable exclusive contracts with MDU owners.[5] Taken together, and in the context of MVPD services, these provisions direct the Commission to make alternative MVPDs available to MDU residents and to adopt rules, not inconsistent with the Communications Act, as may be necessary to carry out that function.

III. THE COMMISSION SHOULD ADOPT REGULATIONS TO REQUIRE THE SHARING OF INSIDE WIRING.

11. In its comments, DIRECTV argues that "[a]s long as the cable operator continues to control the inside wiring of an MDU, it has a *de facto* exclusive contract with the MDU owner." DIRECTV Comments at 9. We agree. In order for the proposed ban on exclusive contracts to have the desired effect of fostering competition between cable and alternative MVPDs with respect to MDUs, the Commission also must adopt rules to require the sharing of inside wiring. Currently, an alternative MVPD that seeks to provide service to an MDU must either overbuild the existing wiring or share existing wiring with the incumbent cable operator. Overbuilding, however, is disruptive and inconvenient for the MDU owner and the building's residents. As a result, MDU owners often will not permit overbuilding because of those and other aesthetic concerns. Therefore, sharing is the only feasible option available to an alternative MVPD.

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[5] Section 1 authorizes the Commission "to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, nationwide and world-wide wire and radio communication service." 47 U.S.C. § 151. Section 4(i) authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Similarly, Section 303(r) authorizes the Commission to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act . . ." 47 U.S.C. § 303(r).

12. The sharing of inside wiring will lessen the market power of cable operators by enabling MDU residents to choose their preferred MVPD provider, to switch providers if they become dissatisfied with their current provider, or to receive service from more than one provider at the same time. These choices will lead to more competition among MVPDs with respect to MDUs and improved quality of service to all subscribers.

13. We agree with DIRECTV that sharing of wiring is technically feasible and will not cause interference with or reduce the quality of the cable television signal because DBS signals and cable signals operate on different frequencies. DIRECTV Comments at 10. Indeed, DIRECTV notes that currently, in MDUs in which the building owner owns the inside wiring, it delivers its programming over the same wiring used to deliver cable programming and that it "is not aware of any situations in which the sharing of wiring in this manner has caused interference with the cable signal." DIRECTV Comments at 11-12.

14. Access to existing inside wiring is necessary for alternative MVPDs to compete with incumbent cable operators for the provision of video services to MDUs. Where the MDU owner owns the inside wiring, an alternative MVPD can negotiate with the MDU owner for the right to share that wiring with the incumbent cable provider. In most cases, however, the cable incumbent owns the wiring and is unlikely to engage in good-faith negotiations with an alternative MVPD seeking to provide a competing video service. *See* DIRECTV Comments at 12. A cable incumbent's refusal to share the wiring is a formidable obstacle to competition. Accordingly, to eliminate this obstacle to competition the Commission should adopt rules to require the sharing of inside wiring.

15. The Commission has authority under Sections 1, 4(i) and 303(r) of the Communications Act to require the sharing of inside wiring. *See, supra*, note 4. As previously discussed, in terms of MVPD competition, these provisions give the Commission authority to adopt such rules as are necessary to make alternative MVPDs available to MDU residents and to promote MVPD competition. Because a cable incumbent's refusal to share its wiring is an impediment to competition by alternative MVPDs with cable and, thus, violates the purposes of the Communications Act, the Commission has the authority to adopt rules requiring the sharing of inside wiring.

IV. CONCLUSION.

16. The purpose of the Commission's inside wiring rules is to promote competition in the video distribution marketplace by making alternative MVPD services available to MDU residents. Cable exclusive contracts and the cable incumbent's control of inside wiring foreclose competition by alternative MVPDs in MDUs. In order to remove these barriers to entry and obstacles to competition, the Commission should adopt rules (1) prohibiting

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cable operators from entering into, or enforcing, exclusive contracts with MDU owners and (2) requiring the sharing of inside wiring.

Respectfully submitted,

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